



GENERAL STATUTES COMMISSION

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
*Assistant Revisor of
Statutes*

MEMORANDUM

To: General Assembly
From: General Statutes Commission
Re: GSC 2014 Technical Corrections (SB 745/HB 1118)
Date: June 24, 2014

General Comments

The technical corrections recommended by the General Statutes Commission for 2014 consist of corrections of a technical nature to the General Statutes and session laws.

These amendments correct typographical, redlining, and other obvious drafting and stylistic errors, make conforming changes, update archaic phrasing, style, and formatting, repeal obsolete provisions, restate existing law without change from the published statute due to an antique apparent publishing error, and deal with a publishing error in an 1895 session law.

Specific Comments

Section 1 restates subsection (c) of Rule 59 of the North Carolina Rules of Civil Procedure, without change, as it is currently published.

The restatement is due to the discovery of an apparent publishing error that appeared in the initial publication of the Rules of Civil Procedure in the General Statutes. The up-to-30-day extension of time to file affidavits opposing a motion for a new trial under subsection (c) of Rule 59 that is found in Rule 59 as published was only 20 days in the enacting session law (Chapter 954 of the 1967 Session Laws). The error has probably already been cured by the enactment of G.S. 164-11.9, which adopted the 1969 Replacement Volume 1A that contained the Rules of Civil Procedure. Reenacting subsection (c) as published will, however, remove any remaining question.

Section 2 amends G.S. 15-11.2 to add a subsection catchline to subsection (d) to conform to the style of that statute. All other subsections in the statute have subsection catchlines.

Section 2.1 amends G.S. 15A-830 to update entries related to the classification of crimes. G.S. 15A-830 is the definitions section in the Crime Victims' Rights Act (Act). The definition of "victim" includes a list of crimes grouped by felony classification level. Over the years, some of these have been increased in severity or repealed but conforming amendments have not been made in this section. Specifically:

- G.S. 14-34.6 and G.S. 14-190.17A are now Class H felonies rather than Class I felonies;
- G.S. 14-32.3(c) and G.S. 14-190.19 have been repealed (but the provisions of the Act should still apply to victims of those crimes before their repeal); and

- G.S. 14-190.17 and the former Class G offense in G.S. 20-141.4 are now Class E or higher felonies and do not need to be specifically listed because all Class A through Class E felonies are already included.

Section 2.2 deletes a phrase in the catchline of G.S. 20-28.9 that is no longer needed as a result of amendments last year in S.L. 2013-243. That act allowed forfeiture of motor vehicles for speeding to elude arrest under some conditions, in addition to forfeiture for driving while impaired. As a result, the specific reference in the catchline of G.S. 20-28.9 to "driving while impaired" forfeitures is no longer necessary. G.S. 20-28.9 deals generally with the program to tow, store, and sell forfeited motor vehicles.

Section 2.3 repeals G.S. 28A-22-7(c), which is obsolete.

G.S. 28A-22-7, enacted in 1975, provides a method of distributing personal property to a minor without requiring the appointment of a guardian of the estate. In order to use this statute, the total value of the property must be less than \$1,500. Subsection (c) reads, "This section establishes a procedure that is separate from the provisions of G.S. 33-69.1 and it is not the intention of this section to repeal in whole or in part the provisions of G.S. 33-69.1." G.S. 33-69.1 was part of the old Uniform Gifts to Minors Act, which was repealed in 1987, rendering subsection (c) obsolete.

Section 2.4 amends G.S. 31-33 to eliminate "garbage language" that resulted when G.S. 31-33 was amended by two different session laws in 2011. S.L. 2011-284, s. 32, amended the section to make technical and conforming amendments, one of which struck the word "his" and replaced it with "the caveator's." S.L. 2011-344, s. 8, made several amendments in Chapter 31, including substantially rewriting G.S. 31-33. The amendments by the latter did not take the amendments by the former into account, and as a result, "the caveator's" remains in the statute as a dangling phrase with no meaning.

Section 3 amends G.S. 42A-15 to remove an extra word ("the") in the second sentence. The error appeared in the enacting session law, S.L. 1999-420.

Section 4 amends G.S. 53-244.111 to update the proper contact office in sub-subdivision (22)f.

Initially, the Commissioner of Banks implemented and managed the State Home Foreclosure Prevention Project and was the correct contact office to be listed in the notice referred to in G.S. 53-244.111. In 2012, however, the program was transferred to the North Carolina Housing Finance Agency. A conforming change to the reference in G.S. 53-244.111 should have been made at that time; Section 4 makes the conforming change.

Section 4.1 amends G.S. 58-50-75(b) to remove (i) an obsolete reference and (ii) a reference to an insurance program to which G.S. 58-50-75 no longer applies.

G.S. 58-50-75 is the purpose, applicability, and definitions section for the statutes dealing with the right to an external review of certain decisions under health benefit plans. The reference

to the High Risk Pool is obsolete and should be removed because the Pool has been dissolved. The reference to the Health Insurance Program for Children is also no longer needed because a separate and specific provision for external review of decisions under that Program was enacted in 2010 (S.L. 2010-70). As a result, external reviews are no longer conducted under the insurance statutes but under G.S. 108A-70.29. A conforming amendment removing the reference in G.S. 58-50-75(b) to the Program should have been made at that time but was not.

Section 5 amends G.S. 95-111.4 to update the punctuation style of the listed subdivisions and thereby eliminate the need to keep moving the conjunction each time a new subdivision is added. The section also makes the statute gender neutral and updates some of its archaic phrasing and legalese.

Section 6 amends G.S. 95-148 to update the punctuation style of the list of duties, thus removing the need for a conjunction, makes the statute gender neutral, and updates the style in two places.

Subsection 7(a) amends G.S. 111-47.1 to complete the codification of the statute. As enacted by S.L. 1999-237, s. 15.17, the statute was not codified but the Revisor of Statutes was directed to codify it in Article 3 of Chapter 111, which was done. To complete the codification, the phrase "Article 3 of Chapter 111 of the General Statutes" should be changed to be a reference to "this Article," since the statute now is actually located in Article 3. **Subsection 7(b)** makes a parallel change to the recently enacted G.S. 111-47.2. **Subsection 7(a)** also replaces the reference to the time the section became law with the actual effective date.

Section 8 amends G.S. 113-133.1(e) to make a conforming amendment. One of the local acts referenced in that subsection, at the listings for Polk County and Rutherford County, was repealed by S.L. 2013-13.

Section 9 amends G.S. 115C-325(h)(7) to correct a spelling error created by S.L. 2011-348. "Board of Eduation" should be "Board of Education."

Section 10 amends G.S. 130A-294.1(b) to update the punctuation style of the list contained in the subsection, thereby eliminating the need to keep moving the conjunction each time an additional purpose is added to the list.

Section 10.1 amends G.S. 130A-335(f1) to correct a typographical error in a statutory reference. The reference to "G.S. 130-336" should be a reference to "G.S. 130A-336."

Former Chapter 130 of the General Statutes dealt with public health. In 1983, most of it was repealed and replaced with a new chapter, Chapter 130A. In 1989 the last portions of Chapter 130 were finally repealed. Subsection (f1) of G.S. 130A-335 was not enacted until 1995 (Chapter 285 of the 1995 Session Laws), and in any event, there never was a "G.S. 130-336." The intended reference was to G.S. 130A-336, which deals with improvement permits and was amended in the same session law that enacted G.S. 130A-335(f1).

Section 11 amends G.S. 136-93(b) to correct two statutory references.

G.S. 136-93(b) was enacted by S.L. 2011-397, s. 1 (SB 183 of the 2011 Regular Session). As enacted, the provision contained a reference to "G.S. 136-129(a)(4)" and a reference to "G.S. 136-129(a)(5)." However, G.S. 136-129 does not contain any subsections, so the inclusion of "(a)" in the references was an error. The error occurred because the first version of SB 183 contained an amendment to G.S. 136-129 that would have designated the existing text as subsection (a) and added a new subsection (b). This amendment, however, was dropped from the second version of the bill. The references in the new G.S. 136-93(b) were inadvertently not corrected at that time.

Section 11.1 repeals G.S. 143-52.2, which is now obsolete.

G.S. 143-52.2 and G.S. 114-8.3 used to be complementary provisions that dealt with a required review by the Attorney General's office of contracts for supplies, materials, printing, equipment, and contractual services in excess of one million dollars (\$1,000,000). Last year, however, the law on review and approval of the forms of contracts was overhauled and significantly modified in S.L. 2013-234. Provision for review of contracts for contractual services by the Attorney General was retained in G.S. 114-8.3, but the triggering amount was raised to five million dollars (\$5,000,000). In addition, the provision for reviewing contracts for supplies, materials, printing, and equipment was stricken. A new G.S. section, G.S. 143-50.1, created a new Contract Management Section in the Department of Administration's Division of Purchase and Contract with the duty of reviewing contracts for supplies, materials, printing, equipment, and contractual services over one million dollars (\$1,000,000). Apparently, the existence of G.S. 143-52.2 was overlooked. As a result, the new provisions enacted last year conflict with G.S. 143-52.2, which is no longer necessary and should therefore be repealed.

Section 12 amends G.S. 143-151.57 to remove "garbage language" caused by redlining conflicts in two different acts.

G.S. 143-151.57 was amended in 2009 by two different acts. SL 2009-451, s. 21.8, effective July 1, 2009, generally increased fee amounts and inserted "or renewal" in entries for issuance of home inspector licenses and associate home inspector licenses. SL 2009-509, s. 1, effective October 1, 2013, amended the section to remove references to associate home inspector licenses but did not take the amendments by SL 2009-451, s. 21.8, into account. As a result, the words "or renewal" and the increased fees for applications, issuance or renewal, or late renewal of associate home inspector licenses were not deleted. Technically, these words remain in the statute as "garbage language."

Section 13 amends G.S. 143-151.77 to correct an obvious error. The word "subsection" in subsection (a) should have been "section."

As enacted in S.L. 2013-206, s. 1, the first paragraph of G.S. 143-151.77 was not designated as a subsection. The phrase "as provided in this subsection" therefore was an obvious error. As an additional point, the paragraph containing that phrase does not provide specifics for assessing and collecting civil penalties; these appear in the remainder of G.S. 143-151.77.

As an informational matter, please note that the failure to designate the first paragraph was itself an error, but that error could be and was corrected by the Revisor of Statutes.

Section 14 amends G.S. 150B-41 to correct a statutory cross-reference.

G.S. 150B-41 is derived from former G.S. 150A-29, brought forward into Article 3A of Chapter 150B of the General Statutes when the Chapter was originally enacted in 1985. The reference in G.S. 150B-41(b) to "G.S. 150B-30" was carried forward from the former statute, which had only the equivalent of subsections (a) and (b) of G.S. 150B-41. The equivalent of G.S. 150B-41(d) was former G.S. 150A-30. Former G.S. 150A-30 was brought forward into Article 3 of Chapter 150B, but its substance plus an additional sentence was also incorporated into G.S. 150B-41 as subsection (d). As a result, it is not necessary to refer users of G.S. 150B-41 to a statute in a completely different article of Chapter 150B; they need only be referred to subsection (d) of the same statute.

Subsections 15(a) and 15(b) repeal G.S. 153A-357(d) and G.S. 160A-417(c), respectively, because these provisions are now obsolete.

G.S. 153A-357(d) and G.S. 160A-417(c) prohibit the issuance of building permits for land-disturbing activity that was subject to but did not comply with the requirements of G.S. 113A-71. G.S. 113A-71 was designed to limit stormwater runoff from large parking lots and required either that the amount of impervious paving be limited or that the runoff flow to an appropriate bioretention area. All three provisions, as well as G.S. 113A-70, were enacted as part of Section 8 of S.L. 2008-198. In 2013, however, G.S. 113A-70 and G.S. 113A-71 were repealed. There appears to have been no replacement legislation. As a result, G.S. 153A-357(d) and G.S. 160A-417(c) are effectively obsolete.

Section 15.1 amends G.S. 160A-58.64 to correct a typographical error in a statutory reference. The reference to "G.S. 163-58.55" should be a reference to "G.S. 160A-58.55." There is no "G.S. 163-58.55."

Section 16 provides that the 1895 charter of the Town of Columbus can be properly referred to as either "Chapter 254" or "Chapter 354" of the 1895 Private Laws of North Carolina. The labelling of the session law as "Chapter 354" appears to have been a publishing error. The 1895 charter has been repealed and replaced, but this section would validate either reference as it may appear in historical documents.

Section 16.1 amends Section 5 of S.L. 2011-84 to correct a typographical error in a statutory reference. Section 5 is the applicability section of S.L. 2011-84. The reference to "G.S. 160A-340(c)" should have been a reference to "G.S. 160A-340.2(c)." There is no subsection (c) in G.S. 160A-340.

Section 17 corrects an obvious drafting error in the effective date for Part VII of S.L. 2013-413. The reference in Section 60(c) to "[t]his act" should have been a reference to "[t]his Part."

S.L. 2013-413 (HB 74) as enacted contains an apparent conflict in effective dates. Part VIII of the act (SEVERABILITY CLAUSE AND EFFECTIVE DATE), which clearly applies to the entire act, contains a standard generic effective date provision making the act effective when it becomes law unless otherwise provided. Part VII (INDUSTRIAL COMMISSION), however, contains an effective date provision in Section 60(c) making "this act" effective July 1, 2015. Part VII was taken from a different bill (SB 112 – Create Jobs Through Regulatory Reform), which failed to pass. Part VII was added to HB 74 only as part of a conference committee substitute, on July 25, 2013 (the day before the General Assembly adjourned). The Part VII effective date provision was added at that point. As drafted, it is an obvious drafting error; it should have stated that Part VII ("this Part") becomes effective July 1, 2015.

The amendments are effective when they becomes law.